A

SHELTER CHRISTIAN FELLOWSHIP FOR AID AND WELFARE

v.

MENTERI SUMBER MANUSIA MALAYSIA & ANOR

B

COURT OF APPEAL, PUTRAJAYA
SITI NORMA YAAKOB JCA
DENIS ONG JCA
HAIDAR MOHD NOR JCA
C [CIVIL APPEAL NO: W-01-152-1998]
28 SEPTEMBER 2006

LABOUR LAW: *Industrial Court - Reference by minister - Alleged dismissal of 2nd respondent by appellant - Appellant initially notified that*
D *2nd respondent's representations not referred to Industrial Court but subsequently informed that reference was to be made - Certiorari - Whether minister had made two decisions - Whether first letter contained a wrong decision and second letter was sent to correct that administrative slip - Whether minister at fault*

E

ADMINISTRATIVE LAW: *Remedies - Certiorari, application for - Alleged dismissal of 2nd respondent by appellant - Appellant initially notified that 2nd respondent's representations not referred to Industrial Court but subsequently informed that reference was to be made - Whether*
F *minister had made two decisions - Whether first letter contained a wrong decision and second letter was sent to correct that administrative slip - Whether minister at fault*

The dispute in this appeal arose from the representations made by the 2nd respondent to the Director General of Industrial Relations
G ('DG') that he had been dismissed without just cause or excuse by his employer, the appellant. When no settlement was reached, the DG referred the matter to the 1st respondent for the latter's direction under s. 20(3) of the Industrial Relations Act 1967 ('Act'). The first notification that the appellant received of the 1st
H respondent's decision was a letter sent by an official from the Enforcement and Co-ordination Unit of the Ministry of Manpower dated 17 October 1996, informing all parties concerned that the 1st respondent had decided not to refer the 2nd respondent's representations to the Industrial Court. Five months later in a
I letter dated 14 March 1997, the same official informed the appellant that the 1st respondent had decided to refer the 2nd

respondent's representations to the Industrial Court for an award, and also withdrew the contents of the earlier letter, regretting the confusion and inconvenience that it had caused.

Based on the first letter, the appellant had applied to have the decision of the 1st respondent to refer the 2nd respondent's representations to the Industrial Court as contained in the second letter set aside by way of *certiorari*. The High Court dismissed the appellant's application on the ground that the 1st respondent made only one decision and not two decisions as maintained by the appellant, it being the one reached on 30 September 1996 when he had decided to refer the matter of the 2nd respondent's dismissal to the Industrial Court for an award. Unfortunately, that one and only decision had been communicated wrongly to the appellant and a reasonable and acceptable explanation had been given about how that had happened. On realizing that they had not communicated the true decision of the 1st respondent, his official had acted promptly by sending the second letter of notification. The appellant appealed against the decision of the High Court.

Held (dismissing the appeal)
Per Siti Norma Yaakob JCA:

(1) There was no reason to disagree with the findings of the High Court as the affidavit evidence of the 2nd respondent explaining how the mistake had happened was in no way disputed. The 1st respondent is empowered to exercise his discretion under s. 20(3) of the Act to either refer or decline to refer any representation made to him to the Industrial Court for an award. In the instant appeal, he had decided to refer the 2nd respondent's representations to the Industrial Court for an award but unfortunately his officer made an administrative slip by communicating a wrong decision that was not considered by the 1st respondent in the first place. It was to correct this administrative slip that the second letter was sent. Under these circumstances, the 1st respondent could not be faulted for the administrative slip of his officer and on that finding, the coram unanimously decided that this appeal be dismissed but made no order as to costs and directed that the deposit be refunded to the appellant. (paras 8 & 9)

A

Bahasa Malaysia *translation of headnotes*

Pertikaian dalam rayuan ini berbangkit dari representasi yang dibuat oleh responden kedua kepada Ketua Pengarah Perhubungan Perusahaan ('DG') bahawa beliau telah dibuang kerja
B oleh majikannya, iaitu perayu, tanpa sebab dan alasan yang adil. Oleh kerana tiada penyelesaian dicapai, maka DG telah merujuk halperkara kepada responden pertama di bawah s. 20(3) Akta Perhubungan Perusahaan 1967 ('Akta') bagi mendapatkan arahan. Pemberitahuan pertama yang diterima perayu berkaitan keputusan
C responden pertama adalah satu surat yang dihantar oleh seorang pegawai dari Unit Penguatkuasa dan Koordinasi, Kementerian Sumber Manusia bertarikh 17 Oktober 1996, memberitahu semua pihak terbabit bahawa responden pertama memutuskan untuk tidak merujuk respresentasi responden kedua ke Mahkamah Perusahaan.
D Namun, lima bulan kemudian, melalui surat bertarikh 14 Mac 1997, pegawai yang sama memberitahu perayu bahawa responden pertama memutuskan untuk merujuk representasi responden kedua ke Mahkamah Perusahaan untuk suatu award, sekaligus menarik balik kandungan surat terdahulu serta menyatakan kekesalan atas
E kekeliruan dan kesukaran yang berbangkit.

Berdasarkan surat pertama, perayu memohon perintah *certiorari* bagi mengenepikan keputusan responden pertama merujuk representasi responden kedua ke Mahkamah Perusahaan melalui
F surat kedua berkenaan. Mahkamah Tinggi menolak permohonan atas alasan bahawa responden pertama hanya membuat satu keputusan sahaja, iaitu keputusan 30 September 1996 bilamana beliau memutuskan untuk merujuk perkara pembuangan kerja responden kedua ke Mahkamah Perusahaan, dan bukannya dua
G keputusan. Cumanya, keputusan yang satu itu telah disalah-sampai kepada perayu dan penjelasan yang munasabah dan dapat diterima telahpun dibuat tentang bagaimana ianya berlaku. Malah, sebaik menyedari mereka tidak menyampaikan keputusan sebenar responden pertama, pegawai responden pertama bertindak dengan
H segera dengan menghantar surat pemberitahu yang kedua. Perayu merayu terhadap keputusan Mahkamah Tinggi ini.

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Diputuskan (menolak rayuan)
Oleh Siti Norma Yaakob HMR:

(1) Tiada alasan untuk tidak bersetuju dengan dapatan-dapatan Mahkamah Tinggi, oleh kerana keterangan afidavit responden kedua yang menerangkan bagaimana kesilapan berlaku langsung tidak dicabar. Responden pertama diberi kuasa untuk melaksanakan budibicaranya di bawah s. 20(3) Akta sama ada untuk merujuk atau tidak merujuk mana-mana representasi ke Mahkamah Perusahaan untuk suatu award. Dalam rayuan ini, beliau telah memutuskan untuk merujuk representasi responden kedua ke Mahkamah Perusahaan untuk suatu award. Malangnya pegawai beliau telah melakukan kesilapan pentadbiran dengan menyampaikan keputusan yang salah yang tidak pernah pun dipertimbang oleh responden pertama. Maka, penghantaran surat kedua adalah bagi memperbetulkan kesilapan. Dalam keadaan sedemikian, responden pertama tidak boleh dipersalahkan atas kesilapan pentadbiran yang dilakukan oleh pegawainya. Atas kedudukan ini, Koram sebulat suara memutuskan menolak rayuan, tidak membuat apa-apa perintah mengenai kos dan mengembalikan deposit kepada perayu.

Legislation referred to:
Industrial Relations Act 1967, s. 20(3)

For the appellant - Anthony Gomez; M/s Gomez & Assoc
For the respondent - Azizah Nawawi SFC
For the 2nd respondent - S Muhendaran; M/s Murugavell Arumugam & Co

[Appeal from High Court, Kuala Lumpur; Originating Motion No: R3-25-67-97]

Reported by Suresh Nathan

JUDGMENT

Siti Norma Yaakob JCA:

[1] The dispute in this appeal arises from the representations made by the 2nd respondent to the Director General of Industrial Relations that he had been dismissed without just cause or excuse by his employer, the appellant. When no settlement was reached, the Director General referred the matter to the 1st respondent for the latter's direction under s. 20(3) of the Industrial Relations Act 1967 ("the Act").

[2] The first notification the appellant received of the 1st respondent's decision was a letter dated 17 October 1996, informing all parties concerned that the 1st respondent had decided not to refer the 2nd respondent's representations to the Industrial Court. That letter was sent by an official from the Enforcement and Co-ordination Unit of the Ministry of Manpower.

[3] Five months later in a letter dated 14 March 1997, the same official informed the appellant that the 1st respondent had decided to refer the 2nd respondent's representations to the Industrial Court for an award. In the same letter too, the writer withdrew the contents of the letter dated 17 October 1996, which he had written earlier on the same subject matter and regretted the confusion and inconvenience that the first letter had caused.

[4] Based on the first letter, the appellant had applied to have the decision of the 1st respondent to refer the 2nd respondent's representations to the Industrial Court as contained in the second letter set aside by way of *certiorari.*

[5] In his affidavit dated 27 August 1997, the 1st respondent has explained that on 25 September 1996, he was handed a file containing the representations made by the 2nd respondent for his consideration. On 30 September 1996, after he had perused and considered the representations, he had decided to refer the representations to the Industrial Court for an award.

[6] However his decision had not been correctly communicated to the appellant as seen from the contents of the first letter dated 17 October 1996. He explained that the mistake was only discovered after his Ministry had on 12 March 1997, embarked on an exercise to computerize all the files of the Ministry. On realizing this mistake his officer had acted immediately by sending the second letter dated 14 March 1997, to regularize the position and to notify all parties the true nature of the 1st respondent's decision that the matter of the 2nd respondent's dismissal be referred to the Industrial Court for an award.

[7] The High Court dismissed the appellant's application for *certiorari* on the ground that the 1st respondent made only one decision and not two decisions as maintained by the appellant. That decision was the one reached on 30 September 1996, when he had decided to refer the matter of the 2nd respondent's

dismissal to the Industrial Court for an award. Unfortunately that one and only decision had been communicated wrongly to the appellant and a reasonable and acceptable explanation has been given how that had happened. On realizing that they had not communicated the true decision of the 1st respondent, his official had acted promptly by sending the second letter of notification.

[8] We see no reason to disagree with the findings of the High Court as the affidavit evidence of the 2nd respondent explaining how the mistake had happened is in no way disputed.

[9] The 1st respondent is empowered to exercise his discretion under s. 20(3) of the Act to either refer or decline to refer any representation made to him to the Industrial Court for an award. In the instant appeal he had decided to refer the 2nd respondent's representations to the Industrial Court for an award but unfortunately his officer made an administrative slip by communicating a wrong decision that was not considered by the 1st respondent in the first place. It was to correct this administrative slip that the second letter was sent. Under these circumstances the 1st respondent cannot be faulted for the administrative slip of his officer and on that finding the coram unanimously decided that this appeal be dismissed but made no order as to costs and directed that the deposit be refunded to the appellant.